

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1 and 15 are currently being amended.

This amendment changes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-26 are now pending in this application.

Claim Rejections under 35 U.S.C. § 101

Claims 1-26 were rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Specifically, the Office Action asserts that the claims are drawn to mathematical algorithms without some claimed practical application.

In response, Applicant has amended claims 1 and 15 to recite the practical application of obtaining “a mixing signal audible to a listener.” Applicant notes that claims 1-14 are directed to a physical computer device. The computer device includes for example, a memory, a processing module and a selection module. An embodiment of the claimed device is shown for example in FIG. 3. Applicant submits that the Office Action’s characterization of claims 1-14 (a mathematical algorithm) is incorrect. The claimed computer device is a physical apparatus and is therefore patentable subject matter under 35 U.S.C. § 101. Further, the claimed computer device has a practical application. As recited in amended claim 1, the computer device is capable of storing and processing audio signals corresponding to a source defined by spatial position data “in order to obtain a mixing signal which is audible to a listener.” Similarly, Applicant has amended independent claim 15 to recite that the processing step results in obtaining “a mixing signal, which is audible to a listener.”

The United States Supreme Court has stated that “when a claim containing [an abstract idea] implements or applies that [idea] in a structure or process which, when considered as a whole, is performing a function which the patent laws were designed to

protect (e.g., transforming or reducing an article to a different state or thing), then the claim satisfies the requirements of § 101.” *Diamond v. Diehr*, 450 U.S. 175, 192 (1981); *see also Gottschalk v. Benson*, 409 U.S. 64, 70 (“Transformation and reduction of an article ‘to a different state or thing’ is the clue to the patentability of a process claim that does not include particular machines.”) Further, the Federal Circuit has held that transformation of data signals qualifies as a patentable process under § 101. *See Arrhythmia Research Technology Inc. v. Corazonix Corp.*, 958 F.2d 1053, 1059 (Fed. Cir. 1992). Here, the claimed invention transforms audio signals defined by special position information into a mixing signal which is audible to a listener. Thus, according to judicial precedent, the claimed invention is patentable subject matter under § 101.

Accordingly, Applicant respectfully requests that the rejection be withdrawn and claims 1-26 be allowed. Further, if the § 101 rejection is maintained, Applicant refers the Examiner to MPEP § 2106 which states “[i]t is essential that patent applicants obtain a prompt yet complete examination of their applications. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement for patentability in the initial review of the application, even if one or more claims are found to be deficient with respect to some statutory requirement. Thus, Office personnel should state all reasons and bases for rejecting claims in the first Office action. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.” (emphasis added.) Accordingly, if the Application is not allowed, Applicant awaits an Office Action stating all reasons and bases for rejecting the claims.

Conclusion

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a

check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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